

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARK ANTHONY BAIAMONTE (#101123), *

Plaintiff *

v. * C.A. 02-3567

JAMES JANECKA, Warden of the George W. Hill *
Correctional Facility, et al.

Defendants *

* * * * *

**REPLY OF DEFENDANTS DRYDEN AND RUARK TO PLAINTIFF'S
RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

Defendants Catherine D. Dryden, Commissioner of the District Court of Maryland in District 2 (Wicomico County, Maryland), and Davis R. Ruark, State's Attorney of Wicomico County, Maryland, by their attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Julia M. Andrew, Assistant Attorney General, hereby reply to Plaintiff's response to their motion to dismiss. In support of this reply, Defendants Dryden and Ruark state as follows.

1. In his opposition to Defendants' motion to dismiss, Plaintiff fails to address the fact that he is currently detained pretrial relative to charges pending in Pennsylvania; thus, only when Plaintiff obtains release on the Pennsylvania charges will the Maryland Governor's warrant for extradition, which has been lodged as a detainer, cause Plaintiff to be deprived of liberty.

2. In his opposition to Defendants' motion to dismiss, Plaintiff contends that any detainer based on the Maryland charges is unlawful because the Honorable Robert C. Wright of the Court of Common Pleas of Delaware County, Pennsylvania, by order dated May 29, 2001, discharged Plaintiff from such detainer; that order was based on the petition for writ of habeas corpus

filed on behalf of Plaintiff by the Public Defender indicating that, at the time, a Governor's Warrant had not been filed with respect to the Maryland charges as required by Pennsylvania law. *See* Exhibit A attached to Plaintiff's memorandum in support of his opposition to Defendants' motion to dismiss. Plaintiff does not address the fact that after Judge Wright granted his petition for writ of habeas corpus, a Governor's warrant was issued relative to the Maryland charges and lodged as a detainer against him.

3. In his opposition to Defendants' motion to dismiss, Plaintiff fails to address or inadequately addresses the defenses raised in Defendants' motion. He fails to address Defendant Dryden's defense relative to the absence of a duty of a District Court commissioner to arrange for a defendant to be brought before a court after charges have been filed. With respect to the defense of absence of any conduct by either Defendant Dryden or Ruark amounting to anything exceeding mere negligence, assuming even that occurred, Plaintiff simply asserts on the 6th unnumbered page of his memorandum in support of his opposition that "mere ignorance by way of negligence through a practicing official of the court is no excuse, when they are sworn to uphold the laws and the United States Constitution." With respect to the defenses of Eleventh Amendment immunity, judicial immunity of Defendant Dryden, and prosecutorial immunity of Defendant Ruark, Plaintiff simply asserts on the 6th unnumbered page of his memorandum in support of his opposition that "Defendants Ruark and Dryden are not entitled to immunity when they did knowingly and willingly and intentionally (*sic*) by way of the color of the law, deprive guaranteed rights of Plaintiff."

WHEREFORE, for the reasons set forth in their motion to dismiss and memorandum in support thereof, Defendants Dryden and Ruark request that the Court dismiss Plaintiff's complaint

against them for failure to state a claim upon which relief can be granted.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October, 2002, a copy of the foregoing Reply to Plaintiff's Response to Defendants' Motion to Dismiss was mailed, postage prepaid, to Mark Anthony Baiamonte (#101123), Allegheny County Jail, 950 2nd Avenue, Pittsburg, Pennsylvania 15219-3100, Plaintiff pro se.

JULIA M. ANDREW,
Assistant Attorney General